

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

LAYNE DREXEL,	:	
	:	
Plaintiff,	:	C.A. No. 05-00428 (JJF)
v.	:	Jury Trial Demanded
HARLEYSVILLE INSURANCE CO.,	:	
	:	
Defendant.	:	

Local Rule 16.4(d) Pretrial Order

1. Statement of the Nature of the Action

By plaintiff:

This civil action concerns the parties' dispute regarding a policy of property insurance, and specifically whether the insurance coverage at issue was effective on June 22, 2004 when fire caused substantial damage to plaintiff's property.

The Court ruled in February 2008 that plaintiff's insurance policy expired prior to the fire at issue. Nonetheless, plaintiff advances two related arguments which, if successful, would mandate insurance coverage under the policy at issue.

First, plaintiff asserts that, due to defendant's actions (and those of its agents) following the fire, Harleysville should be estopped from denying coverage under the property insurance contract (Count II). Second, plaintiff asserts that promissory estoppel applies and precludes defendant from denying coverage for the fire damage.

By defendant:

The defendant contends that the issue before the jury is limited to whether Harleysville is estopped from denying plaintiff's claim. The court has already ruled that there was no contract in effect at the time of the accident.

2. Constitutional Or Statutory Basis of Federal Jurisdiction

Defendant removed this action (from the Superior Court of the State of Delaware) on the basis of diversity of citizenship and its assertion that the amount in controversy exceeds \$75,000.00 (28 U.S.C. § 1332(a)(1)).

3. Statement of Facts Which Are Admitted Without Proof

By plaintiff:

a. Layne Drexel is an adult resident of the State of Delaware and, at all relevant times, was the fee simple owner of 1740 West Fourth Street in Wilmington, Delaware.

b. Harleysville Mutual Insurance Company is a foreign insurance company authorized to insure property within the State of Delaware.

c. Commencing in 1999, defendant insured 1740 West Fourth Street against certain losses, including fire damage. That coverage remained in place until June 7, 2004.

d. On June 22, 2004, an accidental fire caused damage to 1740 West Fourth Street, Wilmington, Delaware.

By defendant:

It is admitted that the fire occurred on June 22, 2004. It is further admitted that the following documents were sent by Harleysville to plaintiff:

- a. March 29, 2004 - premium invoice;
- b. June 14, 2002 - notice of policy cancellation;
- c. July 7, 2004 - conformation of termination;

* Plaintiff does not agree to defendant's proposed facts and demands strict proof thereof.

4. Issues of Fact Which Remain to Be Litigated

By plaintiff:

See plaintiff's portion of the issues of law section.

By defendant:

- a. Was plaintiff aware that his policy had terminated.
- b. Was plaintiff misled by any action on the part of Harleysville.
- c. Did plaintiff sustain a change in position by conduct on the part of Harleysville
- d. Any damages that plaintiff is entitled to recover

5. Issues of Law Which Remain to Be Litigated

By plaintiff:

- a. Whether defendant should be estopped from denying coverage under the insurance policy at issue.
- b. Whether the doctrine of promissory estoppel precludes defendant from denying coverage under the insurance policy at issue.
- c. Whether defendant waived any right to demand timely premium payment by adjusting plaintiff's claim.

By defendant:

It is the defendant's position that the plaintiff is not entitled to attorney's fees because the court has concluded that there was no contract of insurance. Attorney's fees under 18 Delaware Code Section 4102 are only permitted upon a rendering of a judgment against an insurer pursuant to a policy of property insurance.

6. List of Premarked Exhibits

By plaintiff:

- P1 May 8, 1997 Lease Agreement between plaintiff and Dhiro Patel.
- P2 June 17, 1999 Business Owners Application. *
- P3 March 14, 2002 Premium Invoice. **

- P4 June 11, 2003 Premium Invoice. **
- P5 March 23, 2004 Request for Survey by defendant. **
- P6 March 26, 2004 Premium Invoice.
- P7 April 30, 2004 Request for Cancellation/Termination Notice.
- P8 April 30, 2004 Recommendations by Bob Eckert. **
- P9 May 17, 2004 email from Brook Beauman to Linda Seville. *
- P10 June 3, 2004 letter from S.T. Good Insurance, Inc. to plaintiff, with enclosures. *
- P11 Defendant's March 26, 2004 Premium Invoice.
- P12 June 3, 2004 email from Brooke Beauman to Linda Seville. *
- P13 Defendant's June 22, 2004 "Acknowledgement" of Claim No. F SO-530739-U ND.
- P14 June 23, 2004 Assignment Notification from defendant to Tower Insurance Services.
- P15 June 24, 2004 First Report & Acknowledgment by Tower Insurance Services. **
- P16 June 29, 2004 letter from Tower Insurance Services to plaintiff. **
- P17 June 29, 2004 email from Brooke Beauman to Marc Good. *
- P18 July 1, 2004 estimate by Tower Insurance Services. *
- P19 July 6, 2004 Confirmation of Termination, with Certificate of Mailing.
- P20 July 6, 2004 letter from Tower Insurance Services to plaintiff. *
- P21 July 15, 2004 letter from defendant to plaintiff. **
- P22 July 20, 2004 estimate by G. S. Booth & Assocs., Inc. **
- P23 July 23, 2004 Wilmington Fire Department report.
- P24 July 25, 2004 facsimile from Tower Insurance Services to G. S. Booth & Assocs.,

- Inc., including attachment. *
- P25 July 27, 2004 letter from defendant to S. T. Good Insurance, Inc. *
- P26 July 27, 2004 report by Fire Analysis Consulting Group. *
- P27 July 29, 2004 facsimile from Tower Insurance Services to G. S. Booth & Assocs., Inc. *
- P28 July 30, 2004 letter from Tower Insurance Services to defendant.
- P29 August 1, 2004 letter from Tower Insurance Services to G. S. Booth & Assocs., Inc. *
- P30 August 9, 2004 estimate by Tower Insurance Services. *
- P31 August 9, 2004 facsimile from Tower Insurance Services to G. S. Booth & Assocs., Inc. *
- P32 August 9, 2004 facsimile from G. S. Booth & Assocs., Inc. to Tower Insurance Services. *
- P33 August 9, 2004 letter from Tower Insurance Services to defendant. *
- P34 August 13, 2004 facsimile from Tower Insurance Services to G. S. Booth & Assocs., Inc. *
- P35 August 13, 2004 facsimile from G. S. Booth & Assocs., Inc. to Tower Insurance Services.*
- P36 August 13, 2004 facsimile from Tower Insurance Services to G. S. Booth & Assocs., Inc. *
- P37 August 13, 2004 Adjustment Invoice by Tower Insurance Services. *
- P38 August 13, 2004 email from Robert Southard to Cherry Clodfelter. **
- P39 August 13, 2004 facsimile from Tower Insurance Services to defendant. *
- P40 August 13, 2004 Statement of Loss.

- P41 August 13, 2004 letter from defendant to plaintiff, with enclosures. **
- P42 August 17, 2005 email from Amber Stanton to Sherry Clodfelter. *
- P43 August 24, 2004 letter from plaintiff to the Insurance Commissioner of the State of Delaware. **
- P44 September 14, 2004 letter from defendant to plaintiff.
- P45 September 14, 2004 letter from defendant to plaintiff, with certified mail receipt. **
- P46 Defendant's March 30, 2005 Audit Trail and processing remarks. **
- P47 Defendant's March 30, 2005 Adjuster Remarks printout. **
- P48 March 30, 2005 email from Vincent Bracco to Sherry Clodfelter. *
- P49 March 30, 2005 facsimile from Vincent Bracco to Sherry Clodfelter. *
- P50 Commercial Package No. MPA-812988 (including Letter of Certification).
- P51 Defendant's "Direct Bill - Account/Payment Info" and Direct Bill - Audit Trail."
- P52 Personal check from Layne Drexel.
- P53 ISO Properties, Inc. Multi-line Report. **
- P54 Defendant's October 25, 2005 Initial Disclosures **
- P55 Defendant's March 17, 2006 Interrogatory and Request for Production Responses.**
- P56 Harleysville's Direct Billing Criteria
- P57 Harleysville's Printed Claim Notes
- P58 Harleysville's Property Claim Manual (May 2005)
- P59 Harleysville's Best Practices Claims Handling Manual (May 2004)
- P60 G. S. Booth & Assoc., Inc. Remediation File

Plaintiff reserves the right to rely upon and exhibits identified by defendant.

* Defendant objects - hearsay Rule 803

** Defendant objects - relevancy Rule 402

By defendant:

- a. March 29, 2004 - premium notice *
 - b. June 14, 2004 - notice of policy cancellation **
 - c. July 7, 2004 - conformation of termination **
 - d. checks by plaintiff drawn on WFSF, Nos. 4356 through 4363 ***
 - e. insurance policy in controversy
- * Plaintiff objects based on Rules 802 (hearsay) and 901 (authentication).
- ** Plaintiff objects based on Rules 802 (hearsay), 901 (authentication), and 402 (relevance).
- *** Plaintiff objects based on rule 402 (relevance).

7. Witness List

By plaintiff:

Layne Drexel
1910 Old Capital Trail
Newark, Delaware

Mark D. Good
S.T. Good Insurance, Inc.
67 Christiana Road
New Castle, Delaware

Jerry Booth
Mark Pedrotti
G. S. Booth & Assocs., Inc.
333 Robinson Lane
Wilmington, Delaware

George Powell
Tower Insurance Services
Post Office Box 4088
Greenville, Delaware

Harleysville Mutual Insurance Co.
355 Maple Avenue
Harleysville, Pennsylvania

Robert Southard
5901 Peachtree Dunwoody Rd. NE
Suite A100
Atlanta, Georgia

Amber Stanton
355 Maple Avenue
Harleysville, Pennsylvania
Nashville, Tennessee

Sherri Clodfelter
Lakeview Ridge II
2630 Elm Hill Pike, Suite 100

Brooke Beauman
225 Monroe Avenue
Edgewater, Maryland

Linda Seville
3 Audrey Drive
Barto, Pennsylvania

Danny Riddle
Lakeview Ridge II
2630 Elm Hill Pike, Suite 100
Nashville, Tennessee

Cynthia Beauman
355 Maple Avenue
Harleysville, Pennsylvania

Vincent J. Bracco
355 Maple Avenue
Harleysville, Pennsylvania

Bob Eckert
355 Maple Avenue
Harleysville, Pennsylvania

Chris Logan
355 Maple Avenue
Harleysville, Pennsylvania

Rob Hamilton
355 Maple Avenue
Harleysville, Pennsylvania

Robert Sullivan
355 Maple Avenue
Harleysville, Pennsylvania

Mildred Alderfer
355 Maple Avenue
Harleysville, Pennsylvania

Plaintiff reserves the right to rely upon and witnesses identified by defendant, and to amend this list.

By defendant:

Robert Southard, Atlanta, GA
Amber Stanton, Harleysville, PA
Sherry Clodfelter, Nashville, TN

Danny Riddle, Nashville, TN
Linda Seville, 3 Aubry Drive, Barto, PA 19504
Brooke Bauman, 335 Monroe Avenue, Edgewater, MD
Mildred Alderfer, Pa
George Powell - Tower Insurance Services Greenville, DE

8. Brief Statement of What Plaintiff Intends to Prove

Plaintiff will show that estoppel and promissory estoppel prevent defendant from denying coverage under for the fire at issue. Further, plaintiff will show that defendant waived its right to demand a timely premium payment by adjusting plaintiff's fire damage loss.

9. Brief Statement of What Defendant Intends to Prove

The defendant expects to prove that the plaintiff was aware that his insurance had not been timely paid. Defendant will also show that plaintiff did not rely upon any action of the defendant but to the contrary tried to fraudulently get the insurance company to pay his loss when he knew the policy had terminated.

10. Statement by Counterclaimants or Cross-claimants

Not applicable.

11. Desired Amendments to the Pleadings

Not applicable.

12. Certification of Settlement Efforts

The parties to this action, through counsel, certify that they have engaged in meaningful, two way settlement communications, without success.

13. Other Matters

By plaintiff:

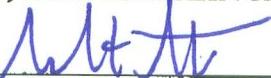
None.

By defendant:

None.

- 14. This order shall control the subsequent course of the action unless modified by the Court to prevent manifest injustice.**

SMITH, KATZENSTEIN & FURLOW LLP



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Attorneys for plaintiff

CASARINO CHRISTMAN & SHALK, P.A.



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800 North King Street, Suite 200
Wilmington, Delaware 19801
(302) 594-4500

Attorneys for defendant

SO ORDERED this _____ day of _____, 2008

United States District Court Judge